

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

CITATION LAKE ZURICH, LLC¹

and

CASE 13-RC-21182

**UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC**

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on April 12, 2004 before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. Issues

The United Steelworkers of America, AFL-CIO-CLC (herein the Petitioner) seeks an election in a unit comprised of all full-time and regular part-time production and maintenance employees who assist in the production of aluminum castings at Citation Lake Zurich, LLC (herein the Employer).

At the Hearing, the Petitioner and the Employer stipulated to the description of the appropriate unit. The parties also stipulated that “group leaders” were supervisors within the meaning of Section 2(11) of the Act. Notwithstanding the stipulations, the Employer insisted on presenting evidence at the hearing in order to have a finding by the undersigned that the “group leaders” are supervisors under Section 2(11) of the Act. No other issues were presented by either party to this proceeding.

II. Decision

For the reasons discussed below, based upon the parties’ stipulations, I find it unnecessary to make a finding on the supervisory status of the “group leaders” apart from

¹ The name of the Employer has been corrected to reflect its proper legal name.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

the parties stipulation and that following unit as stipulated by the parties is an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time production and maintenance employees, including die cast and set-up operators; machining/trim/machine operators; metal handlers; furnace or melt tenders; quality assurance technicians; layout technicians; tool room machinists; maintenance mechanics; sanitation employees; tool crib attendant; shipping expeditor; and shipping and receiving clerks, and excluding temporary employees, group leaders, managers, engineers, metallurgist confidential employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

III. Statement of Facts

At the hearing, the Petitioner and Employer entered into a stipulation pursuant to which the parties agreed that the above-described unit was an appropriate bargaining unit within the meaning of Section 9(b) of the Act. As part of that stipulation, “group leaders” were excluded from the bargaining unit. In addition, the Petitioner and Employer then stipulated that the group leaders for die cast and set-up, trimming, secondary, metal/melt, quality assurance, and tool room “each has the authority, in the interest of the Employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them, or to adjust their grievances or effectively to recommend such action, and in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and they are therefore supervisors within the meaning of § 2(11) of the Act.”

Notwithstanding these stipulations, the Employer insisted on presenting evidence at the hearing on the work performed at its facility and its personnel hierarchy in order to demonstrate that “group leaders” were supervisors under Section 2(11) of the Act. The Employer seeks a declaration from the Regional Director that group leaders are supervisors, despite the parties’ prior stipulation to their exclusion from the proposed bargaining unit.

IV. Analysis

The Employer contends that the Regional Director should issue a decision holding that group leaders are Section 2(11) supervisors and thus excluded from the bargaining unit. However, the parties’ stipulations to that effect prior to the hearing render the question moot. The parties’ stipulations provide the necessary basis for the Regional Director to determine that the unit is appropriate for the purpose of collective bargaining; to determine whether a question concerning representation exists; and to direct an election. No issues remain to be resolved as a result of the stipulations.

A party is required to honor a stipulation made at an initial representation hearing and cannot later attempt to raise an issue already resolved by the stipulation. *Cruis Along Boats, Inc.*, 128 NLRB 1019, 1020-21 (1960). In *Cruis Along*, the Board noted that “to permit a party to repudiate a stipulation formally made at a hearing...would give encouragement to unwarranted and dilatory claims and would result in a lack of finality to Board proceedings and decision.” *Id.* In this case, the Employer is not attempting to repudiate its stipulation. Instead, the Employer is merely seeking a rubber stamp from the Regional Director that the stipulation was proper. No such validation of the stipulation is necessary. Under Board law, the Employer and the Petitioner are held to the stipulation they made at the initial representation hearing identifying group leaders as Section 2(11) supervisors.

In addition, the Board is not required to determine the supervisory status of a job classification in a bargaining unit simply because the issue is raised by a party. *Grancare, Inc.*, 331 NLRB 123 (2000); *I.O.O.F. Home of Ohio, Inc.*, 322 NLRB 921, 922-923 (1997).³ As the Board stated in *Grancare*, “the...assertion that the Board must entertain and rule on [the employees’] supervisory status notwithstanding [the employer’s] pre-election stipulation to their inclusion in the unit is in error.” 331 NLRB at 123. Thus, I need not rule on the supervisory status of group leaders given that the parties have determined and agreed that they are not to be included in the bargaining unit.

V. Conclusion

As no other issues have been raised by either the Employer or the Petitioner, which warrant consideration, I direct an election herein in the unit stipulated by the parties.

VI. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board’s Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period

³ Prior to its decision in *Grancare*, the Board drew a distinction between stipulations as to unit placement made at initial representation hearings and those made as part of a consent-election agreement. *See Layman Candy Co.*, 199 NLRB 547 (1972); *Lake Huron Broadcasting Corp.*, 130 NLRB 908 (1961). The Board permitted parties to relitigate supervisory status in consent-election cases, despite stipulations to the contrary. *See, e.g., Rosehill Cemetery Assn.*, 262 NLRB 1289 (1982); *Judd Valve Co.*, 248 NLRB 112 (1980). But the Board did not permit the relitigation of supervisory status when a stipulation was made at an initial representation hearing, pursuant to the *Cruis Along* rule. *Lake Huron Broadcasting Corp.*, 130 NLRB at 909-910. In *Grancare*, the Board expressly overruled *Rosehill Cemetery*, *Judd Valve*, and similar cases to the extent they were inconsistent with its holding that supervisory status could not be relitigated if already agreed-upon by the parties. 331 NLRB at 125, fn 5. Thus, the prior distinction is removed—parties cannot relitigate an issue resolved by a stipulation irrespective of how they entered into the stipulation. In any event, this specific case does not involve a relitigation issue, since the Employer is not contesting the parties’ stipulation. Thus, the argument that the Board should issue a ruling on the group leaders’ supervisory status is even less compelling than a situation where a party is trying to relitigate the issue—and the Board does not require a ruling in the latter circumstance.

ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the United Steelworkers of America, AFL-CIO-CLC.

VII. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois, 60606 on or before **April 28, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to

comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

IX. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **May 5, 2004**.

DATED at Chicago, Illinois this 21st day of April 2004.

Roberto G. Chavarry, Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, Illinois 60606

CATS — Stipulations by Parties as to
Scope or Composition of Unit

177-8501-3000
401-5050-6700
420-7312-0000